

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 3188 of 1997

Between:

K.Jagannatham S/o Ramaiah
Khammam

..... PETITIONER

AND

- 1 The Industrial Tribunal-Cum-Labour Court
Warangal
- 2 The Depot Manager, A.P.S.R.T.C.,
Khammam Depot KHAMMAM District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or particularly one in the nature of writ of certiorari after calling records in I.D No. 115/88 on the file of 1st respondent and quash the award dated 28/5/1990 in so far as it relates to denial of reinstatement as conductor with back wages and consequently direct the respondents to reinstate the petitioner into service as conductor with back wages.

Counsel for the Petitioner: MR.V.VISWANATHAM

Counsel for the Respondent No.1: P. RAJANI REDDY

Counsel for the Respondent No.2: SC FOR A.P.S.R.T.C

The Court made the following ORDER:

This writ petition is filed by the petitioner aggrieved by the Award passed by the Labour Court in I.D.No.115 of 1988 dated 28.05.1990.

2. The petitioner was appointed in the second respondent–Corporation as Conductor in the year 1972. He was transferred from one depot to another depot over a period of time. While he was working as Conductor under Kothagudem depot and discharging the duties on the route of Khammam to Sattuapply, on 26.08.1983, a surprise check was conducted by the Checking Officials and they found ticket and cash irregularities. Thereafter, appropriate charges were framed against the petitioner and a departmental enquiry was conducted, wherein he was found guilty of the charges. Basing on the enquiry report, the petitioner was removed from the services of the Corporation by order dated 17.08.1984 and the same was also confirmed in the appeal. Thereafter, the petitioner approached the Industrial Tribunal-Cum-Labour Court, Warangal–first respondent raising an industrial dispute. The Labour Court though did not find any irregularities, with reference to the findings of the charges framed against the petitioner, in the domestic enquiry, but, however, while exercising the powers under Section 11-A of the Industrial Disputes Act (for short ‘the Act’), set aside the order of removal and at the same time directed the respondents to appoint the petitioner as Cleaner by reducing his rank from the post of Conductor, with continuity of service together with attendant benefits, but without back wages.

3. The grievance of the petitioner is that he never held the post of Cleaner, as he

was directly recruited as Conductor. Therefore, his post cannot be reduced from Conductor to Cleaner.

4. The learned counsel for the petitioner also relied upon a decision of the Supreme Court in **Nyadar Singh v. Union of India** wherein the Apex Court while considering the provisions of Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short 'the Rules') held that penalty of reduction in rank contemplated under Rule 11 of the Rules does not permit the Government Servant to a post lower than that to which he was directly recruited. The learned counsel further contended that even under the Corporation regulations there is no provision under which the Corporation has got the powers to revert an employee to a post lower than to the one to which he was directly recruited. Therefore, he sought for setting aside the order with a further direction to the Corporation to reinstate the petitioner as a Conductor.

5. The learned counsel appearing for the second respondent –Corporation, on the other hand, supported the Award and also contended that as the charges were found proved against the petitioner, he is not entitled to any relief, but, however, the Tribunal on sympathetic view, ordered appointment of the petitioner as a Cleaner so as to see that the petitioner would not indulge in similar irregularities as was indulged by him. Therefore, the impugned order does not suffer from any irregularity.

6. Heard both sides and considered the material available on record.

7. It is a fact that the petitioner was originally appointed as a Conductor and was continued as such till on the date when he was removed from the service on certain charges of misconduct. The said order was set aside by the Labour Court before which an industrial dispute was raised by the petitioner, but at the same time, it directed the second respondent-Corporation to appoint the petitioner as Cleaner instead of reinstating him as a Conductor. The grievance of the petitioner is that there is no such provision under the regulations of the Corporation to revert a person to a post lower than the one to which he was appointed, by way of punishment. He also relied upon the decision of the Supreme Court referred to earlier.

8. In the light of the above facts, the order passed by the Labour Court directing the Corporation to appoint the petitioner as Cleaner is clearly illegal and unsustainable. Therefore, the order of the Labour Court is modified to the extent of reinstating the petitioner as Conductor with continuity of service together with attendant benefits, but without back wages.

9. The writ petition is accordingly allowed to the extent indicated above. No order as to costs.

S.Ananda Reddy, J

Date:15.09.2004

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To

- 1 The Industrial Tribunal-Cum-Labour Court
Warangal
- 2 The Depot Manager, A.P.S.R.T.C.,
Khammam Depot, Khammam District
- 3 Two CD Copies